IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID KANE and WILLIAM HOUSTON	:	CIVIL ACTION
v.	:	
ADVANCED INTEGRATED TECHNOLOGIES GROUP, INC.	:	NO. 07-269

MEMORANDUM AND ORDER

McLaughlin, J. April 25, 2007

David Kane ("Kane") and William Houston ("Houston") have sued Advanced Integrated Technologies, Inc. ("AIT"), for allegedly failing to honor various promises made to them as employees of AIT and for allegedly interfering with the plaintiffs' prospective business opportunity after the termination of their employment. The defendant has moved to stay proceedings and compel arbitration. The Court will grant the defendant's motion.

I. BACKGROUND

The plaintiffs are consultants who have provided their consulting services to clients through various entities. Beginning in early 2005, the plaintiffs entered into negotiations to merge their consulting services into the defendant with the establishment of a new branch of AIT known as "AIT -- Consulting Services Business." Before the negotiations were complete,

however, the parties began to provide their combined services to certain clients, including DuPont.

To cover this time period, the parties agreed to an interim employment arrangement, which was memorialized in offer letters that AIT presented to Kane and Houston on or around February 4, 2005. The offer letters set forth the duties to be performed by each of the plaintiffs and the terms of their compensation. The offer letters stated that their terms would cover the time period before "development and acceptance of a business structure and operating plan for the AIT Group -- Consulting Services Business." These documents further specified that each plaintiff would "be required to sign an employment agreement with the AIT Group referencing the arrangements in th[e offer] letter and subjecting [each plaintiff] to [AIT's] standard protection clauses for proprietary information, etc."

Kane's offer letter went on to explain that the ultimate business structure and operating plan for AIT Group -- Consulting Services Business would include a "comprehensive compensatory package which may include an equity position in the organization." The target date for the development and acceptance of the business structure and operating plan was April 1, 2005. Kane and Houston signed these letters soon after receiving them.

On February 28, 2005, Houston signed AIT's Proprietary Information, Inventions and Non-Interference Agreement ("Proprietary Information Agreement"). Kane signed an identical document on April 27, 2005. The Agreement included a non-interference covenant that prohibited the plaintiffs from soliciting, accepting the business of, or doing business with any of the defendant's customers for a period of one year after the termination of their employment. The Agreement also contained the following arbitration provision:

> Any controversy, claim or dispute arising out of or relating to this agreement which cannot be amicably resolved by the parties shall be settled by arbitration conducted before a single arbitrator selected by mutual agreement of the parties, and conducted in accordance with the then prevailing rules of the American Arbitration Association. The arbitration decision shall be final, binding and not subject to appeal by either party. Any award pursuant to such arbitration may be registered in any court having competent jurisdiction for execution.

The Agreement specified that "[t]he consideration for the Employee's entering into this agreement consists of the Corporation's agreement to employ the Employee, the training that the Corporation intends to provide to the Employee, and the compensation and benefits afforded to the Employee."

In December of 2005, the defendant distributed a new employee handbook to all its employees, including the plaintiffs. The first page of the handbook stated that "[t]he policies stated in this handbook are guidelines only, with the exception of

[AIT's] policy on 'at-will' employment, and are subject to change at the sole discretion of AIT Group, as are all other policies . . . ." The handbook also stated that with the exception of the policy on at-will employment, the company reserved the right to revise, delete, and add to the provisions of the handbook at any time. All such revisions, deletions, or additions, however, were required to be in writing and to be signed by the president of the company.

Among the various policies described in the handbook was a provision regarding mandatory arbitration:

> By accepting employment with AIT Group, all employees agree to resolve any dispute, claim or controversy arising out of or relating to your employment through binding arbitration. This provision does not limit the scope of any employee claims against AIT Group, any such claims are, however, subject to binding arbitration. The decision or award of the arbitrator shall be exclusive, final, binding and not subject to appeal by either party. The costs and expenses of the arbitration shall be borne by the company.
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> Upon completion of the arbitration, the arbitrator is required to determine the prevailing party, and may award attorneys' fees and costs to the prevailing part [sic], in his or her sole discretion. To invoke arbitration, the aggrieved party shall make demand for arbitration in writing to the other party.

The handbook also contained an acknowledgment form that itself referenced the mandatory arbitration provision. Houston signed the acknowledgment form on December 12, 2005. Because Kane was traveling at the time the handbook was distributed, he sent an

email to the defendant on January 11, 2006, acknowledging his receipt of the handbook and accepting its provisions.

In addition to these written agreements, the plaintiffs allege that Kane received repeated oral commitments from AIT that he would receive equity in AIT Consulting Services and that Kane could distribute the equity to Houston as he saw fit. AIT also allegedly made an oral promise to pay the plaintiffs an annual bonus of eighteen percent of the gross billings for consulting services as part of the interim compensation package.

Despite these alleged obligations, the plaintiffs claim that AIT has refused to participate in the development of a business structure and operating plan for AIT Group -- Consulting Services Business. The plaintiffs further allege that AIT has refused to transfer any equity to Kane and has refused to pay the plaintiffs their bonuses for 2006.

By letter dated December 19, 2006, AIT terminated the plaintiffs' employment. Following the plaintiffs' termination, AIT has allegedly threatened DuPont with legal action if DuPont were to do any business with Kane, Houston, or any entity associated with the two plaintiffs. The basis for this threat is the non-interference covenant contained in the Proprietary Information Agreement. The plaintiffs claim that if DuPont had not been so threatened, DuPont would have contracted with the

plaintiffs for the provision of services as early as January 1, 2007, and in no case later than March 1, 2007.

On February 16, 2007, the plaintiffs filed the present complaint. The complaint contains four counts: breach of contract, detrimental reliance, violation of Pennsylvania's Wage Payment and Collection Law, and tortious interference with prospective business opportunity. The plaintiff seeks compensatory, punitive, and liquidated damages, as well as a declaration that the non-interference covenant is null and void.

II. ANALYSIS[1]

The defendant argues that the Court should stay proceedings and compel arbitration because the plaintiffs' claims fall within the scope of the arbitration provision contained in the Proprietary Information Agreement. The defendant argues in the alternative that the arbitration provision of the employee

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[1] A motion to stay litigation and compel arbitration is reviewed under a summary judgment standard because the ruling will result in a summary disposition of whether the parties have agreed to arbitrate. Par-Knit Mills, Inc. v. Stockbridge Fabrics Co., Ltd., 636 F.2d 51, 54 n.9 (3d Cir. 1980); S&G Elec., Inc. v. Normant Sec. Group, Inc., No. 06-3759, 2007 WL 210517, at *2 (E.D. Pa. Jan. 24, 2007). On a motion for summary judgment, a court must view the evidence and draw reasonable inferences therefrom in the light most favorable to the party opposing summary judgment. See, e.g., Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). Summary judgment is proper if the pleadings and other evidence on the record "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c) (2006).

handbook provides an independent basis for mandating arbitration. The plaintiffs respond by arguing that their claims are not related to the Proprietary Information Agreement and that the arbitration provision of the employee handbook is void for lack of mutuality. The Court will grant the defendant's motion based on the arbitration provision contained in the Proprietary Information Agreement.

A. Scope of the Arbitration Clause Contained in the Proprietary Information Agreement

Pursuant to sections three and four of the FAA,[2] a federal court is authorized to compel arbitration if a party to an arbitration agreement institutes an action that involves an arbitrable issue and one party to the agreement has failed to enter arbitration.[3] Harris v. Green Tree Fin. Corp., 183 F.3d

[2] In the present case, there is no argument that the FAA does not apply to the dispute. According to the United States Court of Appeals for the Third Circuit, the FAA applies to all disputes where the transaction at issue involves interstate commerce and a written agreement to arbitrate exists. See Goodwin v. Elkins & Co., 730 F.2d 99, 108-09 (3d Cir. 1984). Here, neither party disputes that the Proprietary Information Agreement involves interstate commerce or that it contains a written agreement to arbitrate. The arbitration clause contained in the document therefore falls within the scope of the FAA. See Harris v. Green Tree Fin. Corp., 183 F.3d 173, 178 (3d Cir. 1999).

[3] Section three of the FAA provides, in pertinent part:
> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court . . . upon being satisfied that the issue involved in such suit or proceeding is

173, 178-79 (3d Cir. 1999). A motion to compel arbitration calls for a two-step inquiry: (i) whether a valid agreement to arbitrate exists; and (ii) whether the particular dispute falls within the scope of that agreement. Trippe Mfg. Co. v. Niles Auto Corp., 401 F.3d 529, 532 (3d Cir. 2005). In the present case, the parties do not dispute that the Proprietary Information Agreement contains a valid agreement to arbitrate. The Court will therefore confine its discussion to whether the dispute falls within the scope of that agreement.

In determining whether the parties agreed to arbitrate a dispute, courts must apply "federal substantive law of arbitrability." See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626 (1985) (citing Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983)). This body of law counsels that questions of arbitrability be addressed with a healthy regard for the strong federal policy

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> referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement . . . .
> 9 U.S.C. § 3 (2006).
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> Section four of the FAA provides, in pertinent part:
> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for the agreement, would have jurisdiction . . ., for an order directing that such arbitration proceed in the manner provided for in such agreement.
> 9 U.S.C. § 4.

favoring arbitration. Id. All doubts concerning the scope of arbitrable issues must be resolved in favor of arbitration. See id.

The United States Court of Appeals for the Third Circuit has stated that when a dispute consists of several claims, the court must determine on an issue-by-issue basis whether a party bears a duty to arbitrate. Trippe Mfg. Co. v. Niles Auto Corp., 401 F.3d 529, 532 (3d Cir. 2005). The court has also explained that in determining the scope of an arbitration agreement, there is a presumption in favor of arbitrability. Id. Indeed, "an order to arbitrate the particular grievance should not be denied unless it may be said with positive assurances that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." Id. (citing AT&T Technologies, Inc. v. Communications Workers of Am., 475 U.S. 643, 650 (1986)). If the allegations underlying the claims "touch matters" covered by an arbitration clause, those claims must be arbitrated, whatever the legal labels attached to them. Brayman Constr. Corp. v. Home Ins. Co., 319 F.3d 622, 626 (3d Cir. 2003). This presumption in favor of arbitrability is particularly applicable where the arbitration clause is broad. Id. at 625.

In the present case, the arbitration provision of the Proprietary Information Agreement is broad in scope, sweeping

into its reach "[a]ny controversy, claim or dispute arising out of or relating to the agreement . . . ." See, e.g., Detroit Med. Ctr. v. Provider Healthnet Serv., Inc., 269 F. Supp. 2d 487, 492 (D. Del. 2003) (finding that an arbitration clause containing the phrase "arising out of or relating to this agreement" to be broad in scope); see also Bosworth v. Ehrenreich, 823 F. Supp. 1175, 1180 (D.N.J. 1993) (same); compare Goodwin v. Elkins & Co., 730 F.2d 99, 109-10 (3d Cir. 1984) (considering arbitration clause that stated "any controversy arising hereunder" to be broad in sweep). Mindful of the broad language of the arbitration provision at issue and the presumption in favor of arbitrability that exists in this Circuit, the Court finds that the plaintiffs' claims all fall within the scope of the Proprietary Information Agreement's arbitration provision.

In counts one, two, and three, the plaintiffs seek relief based on the defendant's alleged failure to honor (i) the terms of the offer letters, and (ii) various oral promises relating to other aspects of the plaintiffs' compensation packages. As the Proprietary Information Agreement and complaint make clear, these written and oral compensation commitments constituted the consideration for the plaintiffs' execution of the Proprietary Information Agreement. The Agreement specifically states that "[t]he consideration for the Employee's entering into this agreement consists of *the Corporation's*

agreement to employ the Employee, the training that the Corporation intends to provide to the Employee, and *the compensation and benefits afforded to the Employee*." Likewise, in their complaint, the plaintiffs acknowledge that "the consideration for the [Proprietary Information Agreement] consisted of the agreements set forth in the Kane and Houston Offer Letters."

Any dispute over whether this consideration was actually proffered by the defendant would therefore "relate to" the Proprietary Information Agreement because the dispute could potentially render the Agreement void for nonperformance by the defendant. Indeed, under counts one and two -- breach of contract and detrimental reliance -- the plaintiffs seek "a declaration that the Restrictive Covenants (i.e., the Proprietary Information Agreement) are null and void."

Although the plaintiffs do not specifically seek such relief under count three -- violation of the Pennsylvania Wage Payment and Collection Law -- the claim nevertheless revolves around the same issues as counts one and two. Count three arises from AIT's alleged failure to pay a bonus that formed part of the plaintiffs' compensation package. As discussed above, it was this compensation package that constituted the consideration for the plaintiffs' execution of the Proprietary Information Agreement. Indeed, in their opposition brief, the plaintiffs

concede that "the basis asserted for the nullification of the Restrictive Covenants is defendant's breach of the promises set forth in the plaintiffs' respective Offer Letters *and in the oral agreements between plaintiffs and AIT regarding certain aspect [sic] of plaintiffs' compensation packages*."

Because counts one, two, and three all relate to whether the defendant has performed its duties under the Proprietary Information Agreement and therefore whether the Agreement is enforceable, the Court finds that these claims fall within the Agreement's broad arbitration provision.

In count four of the complaint, the plaintiffs seek relief based on the defendant's alleged threat to sue DuPont if the company were to do business with the plaintiffs or any entity related to them. According to the complaint, AIT tortiously interfered with the plaintiffs' prospective business opportunity by "falsely representing to DuPont that [the] plaintiffs are bound by" the non-interference provision of the Proprietary Information Agreement. Such a claim clearly falls within the Agreement's broad arbitration clause. Indeed, the claim does not just relate to the Proprietary Information Agreement, it arises from the defendant's expression of an intent to enforce a provision contained therein.

This conclusion is consistent with Third Circuit precedent regarding the arbitrability of claims arising from

related contracts, where one contract contains an arbitration clause and the other does not. See Brayman, 319 F.3d at 625-26. In Brayman, for example, subsequent to the plaintiff's purchase of a workers' compensation insurance policy from the defendant, the parties entered into a retrospective premium agreement ("RPA"), which required the plaintiff to pay an additional premium on the policy whenever a covered claim led to a judgment or settlement. Id. at 623. Although the underlying policy was silent as to arbitration, the RPA contained a broad arbitration clause. Id. A dispute arose when the plaintiff believed that a claim submitted by one of its employees was meritless but the defendant refused to investigate. Id. at 624. The defendant instead improperly paid the claims. Id. Although the plaintiff ultimately succeeded in convincing the defendant to hire new defense counsel, which ultimately confirmed the plaintiff's suspicions, the defendant nevertheless sought payment under the RPA for the improper payments to the employee. Id.

The plaintiff responded by filing suit, alleging, among other things, bad faith and breach of the defendant's contractual obligation under the policy to provide the plaintiff with a competent defense. Id. The defendant responded by filing a motion to stay proceedings and compel arbitration. Id. The Court granted the defendant's motion, reasoning that all the plaintiff's claims fell within the RPA's broad arbitration

clause, which swept into its reach "any dispute . . . between the Company and Insured with reference to . . . their rights with respect to any transaction involved." Id. at 625. The court rejected the plaintiff's argument that the dispute was not subject to arbitration because the breach of contract and bad faith claims arose under the policy, not the RPA. Id. at 626. The court reasoned that even if these claims "arose under" the policy, they could nevertheless relate sufficiently to the RPA such that they were swept into its broad arbitration clause. See id. (concluding that so long as the "allegations underlying the claims 'touch matters' covered by an arbitration clause in a contract, then those claims must be arbitrated, whatever the legal labels attached to them").

Like the plaintiff in Brayman, the plaintiffs in the present case argue that the dispute "arises under" agreements that do not contain arbitration provisions. Even assuming that this argument is correct, the plaintiff's claims would nevertheless be subject to the arbitration provision of the Proprietary Information Agreement because the claims fall within its broad scope. As discussed above, the plaintiffs' allegations challenge the sufficiency of the consideration that the defendants promised to provide in exchange for the plaintiffs' execution of the Agreement. Such allegations "relate to" the Agreement because they challenge whether the defendant has

performed its duties thereunder and thus the enforceability of the contract.

B. Enforceability of the Arbitration Provision of the Employee Handbook

Because the Court has determined that the plaintiff's claims all fall within the arbitration provision contained in the Proprietary Information Agreement, it will decline to address whether the arbitration provision of the employee handbook is enforceable.

An appropriate order follows.

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ORDER

AND NOW, this 25th day of April, 2007, upon consideration of the defendant's motion to stay proceedings and compel arbitration (Doc. No. 9), the plaintiffs' opposition thereto (Doc. No. 15), and the defendant's reply (Doc. No. 16), IT IS HEREBY ORDERED THAT the defendant's motion is GRANTED for the reasons stated in the accompanying memorandum. The plaintiffs shall arbitrate their claims against the defendant in accordance with the arbitration provision of the Proprietary Information Agreement. This litigation is STAYED pending completion of arbitration.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.